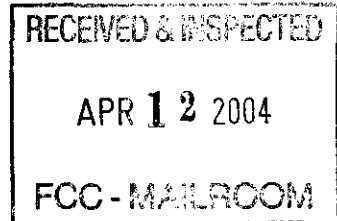


DOCKET FILE COPY ORIGINAL

Thursday, April 08, 2004

Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743



Re: **CC Docket No. 02-6**  
**Request for Review**

**Letter of Appeal for:**

Funding Commitment Denial of FRNs: **1048402 & 1048496**

Form 471 Application Number: **379966**

Billed Entity Number: **141745**

Funding year 2003: **07/01/2003 – 06/30/2004**

Decision Explanation: **Telecommunications Service is from a provider that does not provide telecommunications on a common carriage basis.**

Date of SLD's Decision on Appeal: February 10, 2004  
(see attachment)

Applicant Information: Texas State Library and Archives Commission

Manuel Alvarez  
1201 Brazos St  
Austin, TX 78701  
(512) 463-5481  
malvarez@tsl.state.tx.us

*Commission Chairman*  
Sandra J. Pickert

*Members*  
Chris A. Brisack  
Diana Rae Hester Cox  
Martha Doty Freeman  
Cruz G. Hernandez  
Sandra G. Holland  
Elizabeth Sanders

*Director and Librarian*  
Peggy D. Rudd

*Assistant State Librarian*  
Edward Seidenberg

*Making  
information  
work  
for all  
Texans*

The Texas State Library and Archives Commission is appealing the Schools and Libraries Division's decision to deny funding for FRNs 1048402 & 1048496. The decision to deny was based on a determination that the provider, Department of Information Resources (DIR), does not provide telecommunications on a common carriage basis.

In actuality, our telecommunications service is provided by SBC, Southwestern Bell Telephone Company (SPIN: 143004662). The Department of Information Resources simply acts as the contract manager for all state agencies. SBC is an eligible telecommunications service provider as defined by 47 C.F.R. § 54.5(g), (h). Attached you

No. of Copies rec'd  
List ABCDE

*[Signature]*

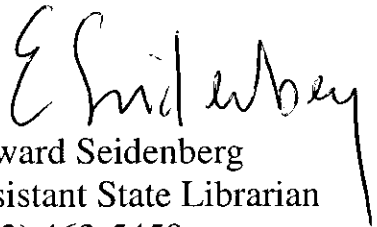
will find the invoices for our SBC service which we obtained from the Department of Information Resources.

The SLD's decision asserts that the Texas State Library and Archives Commission failed to demonstrate that the telecommunications provider that was selected on Form 471 (#379966) was eligible. Attached you will find a letter of support from the Department of Information Resources supporting the Texas State Library and Archives Commission's assertion that the Form 471 incorrectly listed the Department of Information Resources as the service provider rather than SBC.

The Texas State Library and Archives Commission respectfully requests the reconsideration of the Schools and Libraries decision to deny funding for FRNS 1048402 & 1048496 based on an invalid telecommunications provider. The reason for denial becomes irrelevant when the correct service provider is considered in the decision.

Please do not hesitate to contact us if you need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "E Seidenberg", with a long, thin vertical line extending downwards from the end of the signature.

Edward Seidenberg  
Assistant State Librarian  
(512) 463-5459



Universal Service Administrative Company  
Schools & Libraries Division

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**Administrator's Decision on Appeal - Funding Year 2003-2004**

February 10, 2004

Edward Seidenberg  
Texas State Library and Archives Commission  
P.O. Box 12927  
Austin, TX 78711-2927

Re:      Billed Entity Number:            141745  
         471 Application Number:        379966  
         Funding Request Number(s):    1048402 & 1048496  
         Your Correspondence Dated:    September 18, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2003 Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number:        1048402 & 1048496  
Decision on Appeal:                **Denied in full**  
Explanation:

- In your Letter of Appeal, you have indicated that you were bound by state procurement rules and regulations to purchase telecom services through the Department of Information Resources (DIR). You also indicated that the telecom services are actually provided by Southwestern Bell Telephone Company, and that the DIR only acts as the purchasing liaison for all state agencies. Furthermore, you included correspondence from the DIR advising you to indicate the end provider's SPIN in E-Rate applications.
- SLD has deemed the service provider, Department of Information Resources-Telecommunication Services (SPIN 143005581), ineligible as a provider of Telecom Services. Item 21 documentation included sample invoices from this service provider, thus there is no ambiguity regarding which service provider the applicant intended for these FRNs. Consequently, the appeal is denied.

- Your Form 471 indicates that you selected an ineligible telecommunications provider: Department of Information Resources, for Telecommunication Services. FCC regulations provide that only telecommunications carriers are eligible for universal service support. *See* 47 C.F.R. § 54.501(a). FCC regulations define telecommunications carriers as any provider of telecommunications services, and telecommunications services as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 C.F.R. § 54.5(g), (h). Because this mirrors the common law definition of a “common carrier,” the FCC has determined that to be eligible to receive universal service support, the provider must provide telecommunications services on a common carrier basis. *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 at ¶ 134 (1997).
- SLD’s review of your application determined that the telecommunications provider you selected is not eligible to receive universal service support because it does not provide telecommunications services on a common carrier basis. You did not demonstrate in your appeal that the telecommunications provider for which you are seeking support in your Form 471 application is an eligible provider. Consequently, SLD denies your appeal.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be **POSTMARKED** within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the “Appeals Procedure” posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

## SOUTHWESTERN BELL

## PBX-KEY-MULTI LINE RECORD

REL	TELEPHONE NUMBER	EXCH	CS	CUS	PBX KEY-MULTI LINE RECORD		LIST DATE	PAGE	TELEPHONE NUMBER	ROC	T 512B* R		
REL	463 4630	H AUS	XFB	700			8-05-03	2	463 4630 2	59 A1			
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					---RMKS---								
					RMKR ***** ALL ORDERS MUST HAVE							N	
					PON NUMBER *** CPNI=N CPNI=N								
					CPNI=N CPNI=N								
					---COMMON EQUIPMENT---								
				ND8	/ZTDN 512 463-0000-	S		158.95	158.95	10-30-85	2443	2483	000000000000
					0099								
			99	ND9	/ZTDN 512 463-0100-	S		13.35	1321.65	10-30-85	2444	2483	000000000000
					9999								
				XFB		N				7-24-98	2914	00000000000000	
				888TL	/DES TIE LINE 32.TLPA.	N				9-18-01	2997TL	00000000000000	
					340600								
				RCRGR		S		34.97-	34.97-	6-13-00	4499GQ	2483	000000000000
			99	RCRGR		S		2.94-	291.06-	6-13-00	4499GR	2483	000000000000
				NW1TD		N				9-18-01	6102TD	0119	000000000000
				KSTJJ						6-15-01	6837JJ	1161	000000000000
				RJ21X		S				9-18-01	93291X	1105	000000000000
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					THRU 0999 /RTI 702								
			B	RCRGR		S		2.94-	2.94-	9-18-01	4499GR	2483	000000000000
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			C	RJ21X		S				10-30-92	93291X	1105	000000000000
			D	888TL	/DES TIE LINE	N				7-21-89	2997TL	0000B	000000000000
					32.TLPA.340602								
			D	NW1TD		N				10-30-92	6102TD	0119	000000000000
			D	RJ21X		S				10-30-92	93291X	1105	000000000000
			E	888TL	/DES TIE LINE	N				7-21-89	2997TL	0000B	000000000000
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			I	888TL	/DES TIE LINE	N				7-21-89	2997TL	0000B	000000000000

01B

009

04/08/04 08:26 FAX

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From: Sherri Parks [sherri.parks@dir.state.tx.us]  
To: mjohnson@tsl.state.tx.us  
Subject: E-rate

Marilyn,

As the provider of the State of Texas' Telecommunications and data communications services, many of our provided services are e-rate eligible. Because a state network does not actually pay money into the E-rate program, the SLD will only recognize state networks for Internet access and not Telecommunications services. However, because the State of Texas buys the services that comprise the state network from eligible Telecommunications providers, entities that buy these services from DIR would need to list the ultimate end provider's SPIN number, in your case SBC, for Telecommunication's Services.

Since I have been the E-rate contact since the E-rate program began, I have seen many of our customers list our SPIN for Telecommunications Services. As long as the State Library posted its desire to procure these services on the SLD's website, you should use SBC's SPIN number 143004662.

Thanks,  
Sherri

Sherri Parks  
Assistant Director, Telecommunications Services Division  
Department of Information Resources  
(512) 463-3580 office  
(512) 463-3304 fax